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1 ERICA T. LOFTIS, #259286
2 MALCOLM ♦ CISNEROS, A Law Corporation
3 2112 Business Center Drive, Second Floor
4 Irvine, California 92612
5 Phone: (949) 252-9400
6 Facsimile: (949) 252-1032

7 Attorneys for Movant

8 UNITED STATES BANKRUPTCY COURT
9 EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

10 In re)	Bankruptcy Case No. 10-64039
11 JAMES GIBBS,)	
12 Debtor.)	Docket Control No. ETL-1
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13 JPMORGAN CHASE BANK,)	Chapter 7
14 NATIONAL ASSOCIATION, and its)	
15 successors and/or assignees,)	
16 Movant,)	HEARING DATE:
17 vs.)	DATE: March 1, 2011
18 JAMES GIBBS, Debtor, and SHERYL)	TIME: 1:30 p.m.
19 STRAIN, Trustee,)	CTRM: 11
20 Respondents.)	

21 **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION'S MOTION FOR RELIEF**
22 **FROM AUTOMATIC STAY ON REAL PROPERTY (35572 TULE RIVER DRIVE,**
23 **SPRINGVILLE, CA 93265); MEMORANDUM OF POINTS AND AUTHORITIES AND**
24 **REQUEST FOR JUDICIAL NOTICE**

25 **TO THE HONORABLE WHITNEY RIMEL, UNITED STATES BANKRUPTCY COURT**
26 **JUDGE, THE DEBTOR, THE DEBTOR'S COUNSEL, THE TRUSTEE AND OTHER**
27 **INTERESTED PARTIES:**

28 JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, and its successors
and/or assignees ("JPMORGAN CHASE BANK, NATIONAL ASSOCIATION"), hereby moves

1 this Court for an order terminating the automatic stay of 11 U.S.C. §362 as to Movant in the above-
2 entitled and numbered case so that Movant may commence and continue acts necessary to enforce
3 its security interest in real property commonly known as 35572 TULE RIVER DRIVE,
4 SPRINGVILLE, CA 93265.

5 JPMORGAN CHASE BANK, NATIONAL ASSOCIATION requests relief from
6 stay in the above numbered Chapter 7 case because there is no equity in the Property to benefit the
7 Debtor or the estate and Movant's interest is not protected by an adequate equity cushion.

8 This Motion is based upon the attached Declaration and the Memorandum of Points
9 and Authorities attached hereto, as well as upon the documents filed in support of the Motion.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I.**

12 **INTRODUCTORY STATEMENT**

13 JPMORGAN CHASE BANK, NATIONAL ASSOCIATION requests the Court to
14 grant it relief from the automatic stay because there is no equity in the Property to benefit the
15 Debtor or the estate and Movant's interest is not protected by an adequate equity cushion.

16 **II.**

17 **STATEMENT OF FACTS**

18 1. **The Secured Debt.** On or about April 17, 2006, JAMES GIBBS made and
19 delivered a Promissory Note in the original principal amount of \$129,500.00, secured by a First
20 Priority Deed of Trust on the Property commonly known as 35572 TULE RIVER DRIVE,
21 SPRINGVILLE, CA 93265 ("Property"). True and correct copies of the Note and Deed of Trust
22 are attached as Exhibits "1" and "2," respectively.

23 2. **The Default Under The Note.** The Note and Deed of Trust are
24 contractually due for the February 1, 2010 payment. As a result of the default, JPMORGAN
25 CHASE BANK, NATIONAL ASSOCIATION desires to record a Notice of Default and Election
26 To Sell against the Property. The total delinquency under the Note is set forth in detail on Exhibit
27 "3" to the Motion.

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1 3. **The Debtor's Interest In The Property.** The Debtor is the owner of record
2 of the Property.

3 4. **The Filing Of The Instant Petition.** On or about December 03, 2010,
4 JAMES GIBBS filed the instant Chapter 7 Petition as Case No. 10-64039.

5 5. **The Total Indebtedness Under The Note.** The total indebtedness owed to
6 JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, exclusive of attorneys' fees, is as
7 follows:

8 Principal Balance:	\$	124,310.05
9 Interest Accrued from January 1, 2010 to January 8, 2011	\$	9,026.94
10 Escrow Advance:	\$	4,834.15
11 Late Charges:	\$	479.82
12 Other Fees Due:	\$	21.70
13 Recoverable Balance:	\$	476.00
14 TOTAL:	\$	139,148.66

15 6. **The Total Liens On The Property.** The Property is encumbered by the
16 following liens:

17 <u>SECURED CREDITOR</u>	<u>LIEN AMOUNT</u>
18 1. JPMORGAN CHASE BANK, NATIONAL\$ 19 ASSOCIATION (1 st trust deed)	139,148.66
20 TOTAL	\$ 139,148.66

21 7. **The Value Of The Property.** By the Debtor's own admission, the Property
22 has a fair market value of only \$100,000.00. Accordingly, there is no equity in the Property to
23 benefit the Debtor or the estate. True and correct copies of the Debtor's Schedules A and D are
24 attached hereto as Exhibit "4."

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1 III.

2 **RELIEF FROM STAY SHOULD BE GRANTED UNDER**
3 **SECTION 362(d)(2) BECAUSE THERE IS NO**
4 **EQUITY IN THE PROPERTY, NOR REORGANIZATION IN EFFECT**

5 The evidence demonstrates that there is no equity in the Property. By the Debtor's
6 own admission, the Property has a fair market value of \$100,000.00 while the total indebtedness on
7 the Property is \$139,148.66. Based on the foregoing and the liquidation nature of this Chapter 7
8 proceeding, the stay should be terminated immediately. JPMORGAN CHASE BANK,
9 NATIONAL ASSOCIATION has satisfied its burden under Section 362(d)(2).

10 IV.

11 **RELIEF FROM STAY SHOULD BE GRANTED UNDER**
12 **SECTION 362(d)(1) DUE TO THE LACK OF ADEQUATE PROTECTION FOR**
13 **MOVANT.**

14 The evidence demonstrates that JPMORGAN CHASE BANK, NATIONAL
15 ASSOCIATION is not protected by an adequate protection cushion. By the Debtor's own
16 admission, the Property has a fair market value of \$100,000.00 while the total amount owed to
17 JPMORGAN CHASE BANK, NATIONAL ASSOCIATION is \$139,148.66. Based on the
18 foregoing, the stay should be terminated immediately. JPMORGAN CHASE BANK, NATIONAL
19 ASSOCIATION has satisfied its burden under Section 362(d)(1).

20 V.

21 **REQUEST FOR JUDICIAL NOTICE.**

22 Pursuant to Rule 201 of the Federal Rules of Evidence, as made applicable herein by
23 Rule 9017 of the Federal Rules of Bankruptcy Procedure, JPMORGAN CHASE BANK,
24 NATIONAL ASSOCIATION requests that the Court take judicial notice of the following facts:

25 1. The Debtor contends that the Property has a fair market value of \$100,000.00.
26 See Exhibit "4."

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1 VI.

2 **CONCLUSION.**

3 For the foregoing reasons, and based upon the evidence set forth in this Motion, this
4 Court should grant the relief from the automatic stay to allow JPMORGAN CHASE BANK,
5 NATIONAL ASSOCIATION to enforce its rights and remedies under its Note and Deed of Trust
6 including a waiver of the 14-day stay provided by Rule 4001(a)(3) of the Federal Rules of
7 Bankruptcy Procedure.

8 DATED: February 2, 2011

Respectfully Submitted,

9 MALCOLM ♦ CISNEROS, A Law Corporation

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11 By: /s/ Erica T. Loftis
12 ERICA T. LOFTIS
13 Attorneys for Movant
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